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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,473	12/12/2005	Rainer Hahn	OST-041274	1744
22876	7590	04/16/2010	EXAMINER	
FACTOR & LAKE, LTD 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607			EIDE, HEIDI MARIE	
			ART UNIT	PAPER NUMBER
			3732	
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			04/16/2010 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/505,473

Applicant(s)

HAHN ET AL.

Examiner

HEIDI M. EIDE

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-13, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-13, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 16, 2009 has been entered.

Drawings

The drawings were received on December 16, 2009. These drawings are accepted.

Claim Objections

Claim 1 is objected to because of the following informalities: It is believed that on line 19 of the claim "he single cylinder" is in error for --the single cylinder--. Appropriate correction is required.

Claim 19 is objected to because of the following informalities: It is believed that in line 3 of the claim "Container" is in error for --container--. Appropriate correction is required.

Claim 19 is objected to because of the following informalities: It is believed that on line 15 of the claim "the single is" is in error for --the single piston is--. Appropriate correction is required.

Claim 19 is objected to because of the following informalities: It is believed that on line 18 of the claim "he single cylinder" is in error for --the single cylinder--.

Appropriate correction is required.

Claim 20 is objected to because of the following informalities: It is believed that in line 3 of the claim "Container" is in error for --container--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4-13 and 19-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant claims in each one of the independent claims the second working space "permanently and bi-directionally communicates with the cannula", however in par. 17 of the publication applicant discusses a switch which allows the second working space to communicate bi-directionally with the cannula in one position and in a second position allows the second working space to communicate with the cannula and a further flow path leading to the

reservoir. Therefore, support for the second working space **permanently** and bi-directionally communicating with the cannula cannot be found.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-13 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the tissue or into the cavities" in lines 5 and 8.

There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the tissue or into the cavities" in lines 4 and 7.

There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the tissue or into the cavities" in lines 4 and 7.

There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the outlet" in line 29 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Specification

The amendments to the specification on December 16, 2009 have been entered.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

No prior art has been applied to the claims, however, depending on the amendments made to overcome the new matter rejection, prior art may still be applied.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**Heidi Eide
Examiner
Art Unit 3732**

/Heidi M Eide/
Examiner, Art Unit 3732

4/14/10

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732